IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1026 of 1985

Bank of India
a body corporate constituted under
the Banking Companies (Acquisistion and
Transfer of Undertakings) Act V of 1970
and having its head office at Express
Towers, Nariman Point, Bombay 400 021
and its Bombay (Main) Office at
Bank of India Building, 70-80,
Mahatma Gandhi Road,
Fort, Mumbai 40 023. ..Plaintiff

versus

1. M/s. Bliss & Co. a Sole
   Proprietory firm carrying on
   business at Abubakar Mansion,
   7, Colaba Gateway,
   Bombay 400 039.

2. Jayant Mulchand Shah of Bombay,
   Indian Inhabitant, carrying on
   business in the firm name and
   style of M/s.Bliss & Company
   as the sole proprietor thereof
   at Abubakar Mansion, 7 Colaba
   Causeway, Bombay 400 039 and
   residing at Dil Pazir, 65,
   Bhulabhai Desai Road,
   Bombay 400 026. ..Defendants

Mr. Behram Shroff i/b. Little & Co.for the Plaintiff

None for the Defendants

Coram : S.R.Sathe, J.
Dated : 23rd Nov., 2005

ORAL JUDGMENT :

1. The plaintiff-nationalised bank has filed this suit against the defendants for the recovery of

the amount advanced to the defendants under various credit facilities.

2. The plaintiff's case in brief is that the defendant No.1 is a proprietary concern belonging to the defendant No.2. At the request of defendant No.2, the plaintiff bank agreed to grant cash credit facilities of Rs.2,00,000/- to the defendants and accordingly the defendant No.2 executed demand promissory note for Rs.2,00,000/-, letter of continuing security, memorandum of pledge whereby defendant No.1 through its sole proprietor defendant No.2 pledged the stocks of yarn, footwear, P.V.C. leather etc. as a security for the repayment of the monies advanced to the defendants. The defendants utilised the credit facilities on July 20, 1965. The defendants did not repay the amount advanced to them under the said facility but executed letters of acknowledgement and indebtedness to the plaintiff on June 17, 1966, May 15, 1967, July 21, 1969, September 22, 1970, December 17, 1971, July 30, 1975, July 16, 1978, July 13, 1979 and April 14, 1982. They confirmed in writing that the sum of Rs.1,14,387/- + interest from April 1, 1982 on the said amount was due and payable by them to the plaintiffs in respect of the said cash credit

facility.

3. The plaintiff-bank had also granted another facility to the defendants as per their request. The defendants by their letter dated October 26, 1979 forwarded the letter of credit for US$ 1,50,000/- issued by Credito Italiao, Arezzo under which the plaintiff was the advising bank. As per the request of the defendant the plaintiff advanced Rs.6,11,745.50 ps on October 26, 1979. The defendants repaid the said amount from time to time and thus total principle amount of Rs.6,11,745.51 ps. advanced by the plaintiffs to the defendants was repaid, but the defendants did not pay the amount of interest and requested the plaintiffs to charge lowest possible rate of interest. The plaintiff by their letter dated November 26, 1983 requested the defendants to pay Rs.1,76,580/- being the amount due towards interest, calculated @ 18% per annum.

4. It is the case of the plaintiff that inspite of repeated demands, the defendants did not clear their dues as mentioned above and as such the plaintiffs issued notice through their advocate on April 9, 1995 and called upon the defendants to pay

the amount. In spite of the receipt of the notice, the defendants neither paid the amount nor replied the notice. Hence, the plaintiff bank filed the present suit and claimed amount of Rs.30,296.51 together with interest @ 18% as shown in Exhibit N attached to the plaint and Rs.2,22,646.62 as shown in Exhibit O attached to the plaint.

5. The defendants filed their written statement and opposed the suit claim on several grounds.

6. Firstly the defendants contended that the suit is bad for disjoinder of causes of action. They contended that the interest charged by the plaintiff is exorbitant and the same has been capitalised at random and penalty is wrongfully levied. According to the defendants, there is delay on the part of the plaintiffs in taking action and the suit is barred by limitation. The defendants admitted the execution of the letters of acknowledgment, however, contended that the said letters of acknowledgement do not save the period of limitation as alleged by the plaintiff. The defendants therefore, contended that they are not liable to pay any amount to the plaintiff as claimed and the suit filed by the plaintiff is false and

vaxacious. The defendants, therefore, prayed for dismissal of the suit.

7. On these pleadings, followings issues were framed by this Court, Coram : S.U. Kamdar, J. and I have given my findings as mentioned against the same.

1.	Whether the plaintiffs prove that they are entitled to claim Rs.39,296.51 under cash credit facility described in Exhibit-N to the plaint and sum of Rs.2,22,646.62 ps for the advance against the letter of credit as shown in particulars at Exhibit-O to the plaint ?	Yes.
2.	Whether the defendants prove that the suit is not maintainable ?	No.
3.	Whether the defendants prove that it is bad for dis-joinder for cause of action ?	No.

4.	Whether the defendants prove that the rate of interest charged is exorbitant and wrongfully levied ?	No.
5.	Whether the defendants prove that the suit claim is illegal and unenforceable as mentioned in paragraph 5 of the written statement ?	No.
6.	Relief if any ?	As stated in the final order.

R E A S O N S

8. The plaintiffs witness Vedprakash Sood, senior manager of the plaintiff-bank filed his affidavit of evidence. The plaintiffs also filed the original documents at Exhibit A to O as shown in the index of the compilation of original documents. The plaintiffs witness has stated on oath about the cash credit facility advanced to the defendants on June 17, 1965 and the documents executed by the defendant No.2 in that behalf. Similarly he has proved the supplementary agreement of pledge

executed by the defendant No.2. He has also stated that as per the request of the defendants letter dated October 26, 1979 the plaintiff had paid the defendants rupees equivalent to US$75,000/- being 50% of the N.C. value of US$1,50,000/- . Not only that but he has also proved the letter executed by the defendants on February 8, 1980 acknowledging the liability and agreeing to pay interest on the said amount. The plaintiffs witness has also produced the letters of acknowledgement mentioned above. From the perusal of the said letters, it is very clear that the sole proprietor of defendant No.1 has clearly admitted the liability from time to time. The plaintiffs evidence has gone unchallenged in as much as the defendants remained absent and did not cross examine the plaintiffs. Not only that but the defendants have also not adduced any evidence in support of their contentions. Under the circumstances, there is no reason to disbelieve the evidence of the plaintiffs witness and the documents produced by the plaintiff. Having regard to such evidence, it has to be held that the plaintiff has proved the suit claim. Hence, I pass the following order :

O R D E R

The Defendant Nos.1 and 2 to pay the Plaintiffs the amount of Rs.2,52,943.13p (Rupees Two Lakhs Fifty Two Thousand Nine Hundred Forty three and paise thirteen only) and to pay future interest on the said amount at the rate of 9% per annum from the date of the suit till realisation of the amount.

The Defendants to pay Plaintiff the cost of this suit and bear their own.

(S.R.Sathe, J.)